

PILLSBURY WINTHROP SHAW PITTMAN LLP
SHERI FLAME EISNER #162776
sheri.eisner@pillsburylaw.com
DAVID L. STANTON # 208079
david.stanton@pillsburylaw.com
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
Facsimile: (213) 629-1033

PILLSBURY WINTHROP SHAW PITTMAN LLP
JOHN M. GRENFELL #88500
john.grenfell@pillsburylaw.com
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000
Facsimile: (415) 983-1200

Attorneys for Defendant
NETWORK SOLUTIONS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DOE, Individually And On Behalf Of All
Others Similarly Situated,

Plaintiff,

vs.

NETWORK SOLUTIONS, LLC,

Defendant.

No. C 07-5115 JSW

[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO STRIKE

Judge: Hon. Jeffrey S. White
Date: January 25, 2008
Time: 9:00 a.m.
CrtRm: 2

Defendant Network Solutions LLC's ("Network Solutions") Motion To Strike Pursuant to Federal Rule of Civil Procedure 12(f), came on regularly for hearing in room 2 of this Court on January 25, 2008 at 9:00 a.m. before the Honorable Jeffrey S. White. Network Solutions was represented by the law firm of Pillsbury Winthrop Shaw Pittman LLP and plaintiff Doe ("Plaintiff") was represented by the law firm of Gutridge Safier Reese LLP.

After full consideration of the pleadings, records and files herein, including oral argument by both parties, and the authorities submitted by counsel, the Court GRANTS Defendant's Motion to Strike and ORDERS as follows:

Plaintiff's demand for a jury trial is inconsistent with the controlling Service Agreement which governs the parties' relationship. The Service Agreement contains a "Governing Law" provision which Plaintiff agreed to and under which Plaintiff waived the right to a jury trial. Therefore, the Court hereby strikes the following language from the Complaint:

Caption:	"JURY TRIAL DEMANDED"
CAC at 15:24-25:	<u>"JURY TRIAL DEMANDED"</u> ; "Plaintiff hereby demands a trial by jury."

In addition, the Court finds that the following language in Plaintiff's Complaint is inconsistent with the express waivers in the Exclusive Remedy provisions of the Service Agreement, and therefore the Court hereby strikes the following language from the Complaint:

CAC ¶8:26-9-4	"Pursuant to 18 U.S.C. § 2707, which provides for a civil action for any persons aggrieved by a knowing or intentional violation of 18 U.S.C. § 2702, Plaintiff, and those similarly situated, seeks [sic] preliminary and permanent injunction, declaratory and equitable relief statutory damages, actual damages, and disgorgement of any profits made by Defendant as a result of the violation set forth herein but no less than \$1,000 for Plaintiff, and each of those similarly situated; punitive damages and [sic] Court considers just; and reasonable attorneys fees"
---------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

1		
2	CAC ¶10:22-26.	“Pursuant to California Civil Code § 1780(a)(3), Plaintiff, on behalf
3		of himself and similarly situated Class Members, seeks
4		compensatory damages, punitive damages and restitution of any ill-
5		gotten gains due to Defendant’s acts and practices.”
6		“Plaintiff also requests that this Court award him his costs and
7	CAC ¶13:15-17	reasonable attorneys’ fees pursuant to California Civil Code §
8		1780(d).”
9		
10	CAC ¶14:1-2	“Plaintiff and those similarly situated are entitled to actual and
11		punitive damages and injunctive relief for the above-mentioned
12	CAC ¶15:6-7	tortuous act of Defendant.”
13		
14	CAC ¶15:8-10	“Awarding Plaintiff and those similarly situated statutory and actual
15		damages of no less than \$1,000 per class member;”
16	CAC ¶15:11-13	“Awarding Plaintiff and those similarly situated statutory and actual
17		damages of no less than \$1,000 per California Subclass member for
18		Defendant’s violation of Cal. Civ. Code § 1770, <i>et seq.</i> ”
19	CAC ¶15:14-16	“statutory” ... “of no less than \$3,000 per California Subclass
20		member”
21	CAC ¶15:17	“Awarding compensatory damages in favor of Plaintiff and the
22		Class members against Defendant, for all damages sustained as a
23	CAC ¶15:18-19	result of Defendant’s violations of the laws set forth above, in an
24		amount to be proven at trial, including interest thereon;”
25	CAC ¶15:20	“Awarding statutory penalties;”
26	CAC ¶15:21-22	“Awarding Plaintiff and those similarly situated punitive damages;”
27		“Awarding Plaintiff and those similarly situated their reasonable
28		costs and expenses incurred in this action, including counsel fees
		and expert fees;”

The Court finds further support for striking the language quoted above regarding any reference to the \$3,000 statutory damages under the California Consumer Records Act

(Count IV) because such statutory damages are not authorized under the specific provisions under which Plaintiff has brought his claims. (Complaint at Paragraphs 15:11-13; 13:15-17.)

Further, the Court finds that the Exclusive Remedy / Time Limitation provision limits Plaintiff's claims to the period commencing one year before the filing of the Complaint (October 4, 2006).

Finally, the Court finds that the following language in the Complaint confuses the issues in this case and it is hereby stricken:

CAC at 3:5	"that incorporates and includes a Privacy Policy"
------------	---------------------------------------------------

Dated: _____

Jeffrey S. White
Judge of the United States District Court